

David C. Berkoff
BERKOFF LAW FIRM, P.C.
1917 S. Higgins Avenue
Missoula, Montana 59801
Telephone: (406) 546-3038
Email: dberkoff2011@gmail.com
Email: david@berkofflaw.com
Attorneys for Employers Mutual Casualty Company

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA—BUTTE DIVISION**

NAUTILUS INSURANCE
COMPANY,

Plaintiff,

v.

EMPLOYERS MUTUAL
CASUALTY COMPANY and
SENTINEL INSURANCE
COMPANY,

Defendants.

Cause No.: 2:19-CV-00024-SEH

Hon. Sam E. Haddon

**JOINT NOTICE OF SETTLEMENT
OF CLAIMS AND COUNTERCLAIMS
AND JOINT MOTION TO REALIGN
EMPLOYERS MUTUAL CASUALTY
COMPANY AS CO-PLAINTIFF**

Employers Mutual Casualty Company (“EMC”) and Nautilus Insurance Company (“Nautilus”) by and through their respective counsel of record jointly provide Notice to the Court of settlement of claims and counterclaims against one another, and move this Court for its Order realigning EMC as a Plaintiff.

Pursuant to L.R. 7.1, counsel for Sentinel have been contacted and do not oppose the Joint Motion for Realignment or EMC's agreement to withdraw its equitable subrogation claim against Sentinel.

NOTICE OF SETTLEMENT

On September 25, 2020, this Court heard oral argument on the Joint Motion to Dismiss Underwriters. [Dkt 123.] During the hearing, the Court asked EMC and Nautilus to clarify which claims between EMC and Nautilus still remained.

EMC and Nautilus hereby inform the Court that EMC and Nautilus have entered into a settlement agreement and release of Nautilus' claims against EMC and EMC's counterclaims against Nautilus. In particular, the settlement renders Counts I and II of Nautilus' Third Amended Complaint against EMC fully resolved. [Dkt 48.] Counts I and II should continue as to Sentinel. The settlement further renders EMC's Counterclaims I and II against Nautilus fully resolved. [Dkt 52.] There remain no claims by Nautilus against EMC and no claims by EMC against Nautilus. EMC's claims against Sentinel have not been settled.

Notwithstanding, in order to streamline this case, EMC has agreed to withdraw Count VI (Equitable Subrogation) against Sentinel. [Dkt 52 at 27-28.] All of EMC's remaining claims against Sentinel remain unresolved.

JOINT MOTION FOR REALIGNMENT

Federal courts have broad authority to "look beyond the pleadings" and

realign “the parties according to their sides in the dispute.” *Scotts Co., LLC v. Seeds, Inc.*, 688 F.3d 1154 (9th Cir. 2012), citing to *City of Indianapolis v. Chase Nat’l Bank of N.Y.*, 314 U.S. 63, 69, 62 S.Ct. 15, 86 L.Ed. 47 (1941) (internal quotation marks omitted). While a district court’s decision to realign parties is usually made in the context of determining diversity jurisdiction, there is no reason why a court cannot apply the same broad powers to realign parties where doing so serves a housekeeping purpose. The resolution of claims between EMC and Nautilus makes EMC’s current status as a Defendant improper. EMC’s remaining claims, like those of Nautilus, are directed toward recovery from Sentinel. Retaining EMC as Defendant at this point will only promote confusion. EMC and Nautilus therefore respectfully request that EMC be realigned as a Co-Plaintiff with Sentinel remaining as the sole Defendant.

DATED this 15th day of October, 2020.

/s/ David C. Berkoff
BERKOFF LAW FIRM, P.C.

Attorneys for Employers Mutual Casualty Company

DATED this 15th day of October, 2020.

/s/ John L. Wright
HALVERSON, MAHLEN & WRIGHT, P.C.

Attorneys for Nautilus Insurance Company

CERTIFICATE OF SERVICE

I hereby certify that on October 15th, 2020, a copy of the foregoing was served upon the following persons by the following means:

1,2,3,4,5	CM/ECF
_____	Hand Delivery
_____	Mail
_____	Overnight Delivery Service
_____	Fax
_____	E-mail
_____	ECF Electronic filing

1. Clerk, U.S. District Court
2. **WILLIAMS LAW FIRM, P.C.**
MARK S. WILLIAMS
ALEXANDER TSOMAYA
P.O. Box 9440
Missoula, MT 59807-9440
3. **TROUTMAN PEPPER HAMILTON SANDERS LLP**
KEVIN F. KIEFFER (*Pro Hac Vice*)
5 Park Plaza, Suite 1400
Irvine, California 92614
4. **TROUTMAN PEPPER HAMILTON SANDERS LLP**
JAMES H. GEISER, III (*Pro Hac Vice*)
401 9th St. NW, #1000
Washington, DC 20004

Attorneys for Sentinel Insurance Company, Limited

DATED this 15th day of October, 2020.

/s/ David C. Berkoff
BERKOFF LAW FIRM, P.C.